IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 2148 of 2004

Between:

Gaddam Yerri Nagappa S/o Hanumanthu,
R/o Budedu Village, Garladinne Mandal, Anantapur District.

..... PETITIONER

AND

1 The District Collector, Anantapur
2 The Mandal Revenue Officer, Garladinne Mandal. Anantapur District.
3 The Station House Officer, Garladinne Police Station.

Anantapur District.
4 T. Malli Reddy, S/o T. Rami Reddy,
R/o Budedu Village, Garladinne Mandal, Aanantapur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ of mandamus or any other appropriate Writ or direction declaring the proceeding of the 2nd respondent issued in Rc. No. A/182/2003 dt.26-6-2003 as illegal arbitrary and one without jurisdiction.

Counsel for the Petitioner: MR.O.MANOHER REDDY

Counsel for the Respondent Nos.1 to 3: GP FOR REVENUE

Counsel for the Respondent NO.4: SMT.VIJAYALAKSHMI PALADUGU

The Court made the following:

ORDER:

The petitioner is owner of agricultural land admeasuring Acs.3.99 in Survey No.193-1 of Budedu village in Garladinne Mandal of Ananthapur District. He drilled a bore well, obtained electricity service connection and using the bore well for the purpose of irrigation. It appears the fourth respondent gave complaint to the second respondent alleging that the petitioner drilled bore well in Survey No.193-1 unauthorisedly and caused loss to the bore well of the fourth respondent, which is very nearer. The second respondent without conducting enquiry into the matter and without issuing any notice to the petitioner addressed a letter dated 22.6.2003 to the third respondent, namely, Station House Officer Garladinne Police Station requesting him to take immediate action against the petitioner for allegedly violating A.P. Water, Land and Trees Rules, 2002 (the Rules, for brevity). Assailing the said order, the present writ petition is filed. The petitioner contends that there is no provision in the A.P. Water, Land and Trees Act, 2002 (the Act, for brevity) authorizing the Mandal Revenue Officer to direct the third respondent to close the bore well and that the impugned letter is violative to the principles of natural justice. This Court while admitting the writ petition on 06.02.2004, passed interim orders suspending the impugned order. The respondents-1 to 3 as well as fourth respondent have filed separate applications for vacating the interim orders.

In the counter affidavit filed by the Deputy Mandal Revenue Officer attached to the Office of the Mandal Revenue Officer, it is stated that the petitioner sunk a bore well on 24.6.2003 in Survey No.193-1 without obtaining permission under Section 12 of the Act in contravention of the directions issued under Section 13 of the Act, and therefore, action was initiated. A reference is also made to G.O. Ms. No.47 Panchayat Raj & Rural Development (RD-IV) Department dated 3.3.2003 whereby and whereunder the Government of Andhra Pradesh issued orders designating various authorities as implementing agencies for effective implementation of the Act. The allegation that the second respondent cannot go to the third respondent for enforcing the Act is, however, not denied.

Though the Interlocutory applications being WVMP No.621 of 2004 and WPMP No.1165 of 2004 are listed, the writ petition itself is finally heard and being disposed of at the Interlocutory stage with the consent of the learned Counsel for the petitioner and learned Counsel for the Respondents.

The Act is intended to conserve land, water and tree resources. Under Section 10 of the Act, any person, who intends to sink a well for purpose of irrigation or drinking water, shall have to obtain permission from the authority constituted under Section 3 of the Act. Under the Rules, certain restrictions are imposed in sinking bore wells. One such restriction is prohibition for sinking the wells within a distance as specified. What would happen if the provisions of the Act are contravened? Section 15 reads as under:

15. Closure of wells

1. Wherever it appears to the Authority that any well has been sunk or is being sunk or water has been extracted or is being extracted in contravention of any of the provisions of this Act, the Authority or any officer duly authorized by it in this behalf, may enter upon that land, remove obstructions, if any, close the pumping of the water, disconnect the power supply, seize any material or equipment used in connection with such extraction of water and take any such action, as may be required to stop such extraction and may by order require the owner or the person in possession of the well to close or seal-off the well at his expense and in such manner as the Authority may specify in such order and such owner or person shall comply with such order.

2. Where such owner or person fails to comply with any order made under sub- section (1), the Authority may after giving such owner or person due notice in that behalf enter upon the land and close or seal off the well and the cost incurred thereof shall be recoverable from such owner or person as arrears of land revenue.

A plain reading of section 15 would show that when it is brought to the notice of the authorities and that the provisions of the Act have been contravened in sinking a bore well, a provisional order has to be passed requiring owner or the person in possession of the well to close or seal off the well. When the provisional order is not complied with, the authority under the Act may then have to issue the owner or person due notice in that behalf and pass order to close or seal off the well. The requirement of issuing notice is conspicuous by its passing under Sub-section (1) of Section 15. Though Sub-section (2) of Section 15 specifically require the authority to give a notice to the owner or the person using the bore well before passing order of closure or seizure. Reading Sub-sections (1) and (2) of Section 15 together, this Court is of the considered opinion that the requirement of notice would be read into Sub-section (1) of Section 15 as well. It is well settled that a provision of law made by Legislature has to be interpreted in tune with principles of natural justice keeping in view the doctrine of fairness. Indeed under sub-section (1) of Section 15, drastic powers are conferred on the authority to close the pumping of the water, disconnect the power supply, seize any material or equipment used in connection with such extraction of water. It would not be possible to countenance any submission that Legislature never intended that the authority should act in fairness. Principles of natural justice being part of the fairness, it is also incumbent on the authority to issue a preliminary notice before passing a provisional order under sub-section (1) of Section 15. If such a requirement is not read into sub-section (1) of Section 15, in a given case, the Officer can as well disconnect power supply or close bore well. In this connection, a reference may be made to Rule 15 of the Rules, which reads as under:

15. Taking over of well to ensure drinking water:

1. The Authority may by a general or special order shall authorize the Designated Officer to identify such wells as required to ensure supply of drinking water to local population and shall take over such wells.

2. On identification of the wells, the Designated Officer shall serve or cause to serve an order of requisition on the owner of the well specifying the period of such requisition. The Designated Officer for sufficient reasons, may extend such period of requisition.

3. On requisition, the owner of the well shall not draw water for any other purpose other than drinking for his own use.

4. If the well so requisitioned is the only source of irrigation and if the owner is solely dependent on agriculture for his livelihood, the owner shall be compensated for the loss of livelihood. The quantum of compensation shall be decided by the District Collector in consultation with the agriculture department based on the crops raised during the same period in the previous three years by the owner utilizing the water from the well.

Rule 15 of the Rules authorises any authority by a general or special order and in case of emergency so as to ensure supply of drinking water to local population take over such bore well in which event the owner of the bore well will be entitled to be compensated for the agreed loss. The only situation where without notice the bore well can be seized is to ensure the supply of drinking water to the local population in emergency. That being the position, the issuance of notice before passing provisional order under Section 15 (1) of the Act must be held as mandatory requirement. In this case, the impugned notice/order was not issued in such circumstances, and therefore, unsustainable. This Court is also not impressed with the submission of the learned Counsel for the fourth respondent that the petitioner has effective alternative remedy. But Section 23 of the Act would bar a writ petition as it is well settled that when principles of natural justice are violated or found infringed or the action is grossly against the provisions of the Act, it is not a bar to exercise the power under Article 226 of the Constitution of India. (see **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai**.

Section 35 of the Act deals with penalties. The person, who contravenes the provisions of the Act or who violates the Rules made under the Act is punishable with fine of not less than one thousand rupees, which may extend to five thousand rupees. If a person, who without lawful authority damages, alters, pollutes or obstructs any part of a public water supply system is liable to be punished with fine, which may extend to fifty thousand rupees. The Act does not prescribe any imprisonment for any violation of the Act. Further under Section 37 of the Act, it is competent for the authorized Officer to compound any offence under the Act. It is well settled that unless and until a person is alleged with cognizable offence, the Police have no say either in the investigation of the matter or filing of the report except when the Judicial Magistrate of First Class having jurisdiction over the matter directs the Police to take up investigation in relation to non-cognizable offence. That

is not the case here. Therefore, the impugned letter of the Mandal Revenue Officer addressed to the Station House Officer must be held without any legal basis. Secondly if any action is to be taken by the second respondent for closure of bore well as noticed supra, a prior notice before provisional order is passed, is a requirement of law, which has not been adhered to in this case.

The writ petition, therefore, is allowed. It shall however open to the Mandal Revenue Officer to take action against the petitioner for any alleged contravention in accordance with law.

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October 4, 2004. **V.V.S. RAO, J**

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday the Fourth day of October Two thousand and four.

ASSISTANT REGISTRAR

To

1 The District Collector, Anantapur
2 The Mandal Revenue Officer, Garladinne Mandal. Anantapur District.
3 The Station House Officer, Garladinne Police Station.

Anantapur District.
4 Two CCs to the Government Pleader for Revenue, High Court

Buildings, Hyderabad (O.U.T)

5 Two C.D. Copies.